

RECORDING REQUESTED BY:

City of Upland, California
Department of Public Works

AND WHEN RECORDED MAIL TO:

City of Upland
City Clerk's Office
460 N. Euclid Avenue
Upland, CA 91785

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COVENANT AND AGREEMENT REGARDING WATER QUALITY
MANAGEMENT PLAN AND STORMWATER BEST
MANAGEMENT PRACTICES TRANSFER, ACCESS AND
MAINTENANCE

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING
INFORMATION (Additional Recording Fees Apply)

**Covenant and Agreement Regarding Water Quality Management Plan and Storm
water Best Management Practices
Transfer, Access and Maintenance**

OWNER NAME: _____

LEASE HOLDER NAME: _____

PROPERTY ADDRESS: _____

PROJECT CASE NO.: _____

APN: _____

THIS AGREEMENT is made and entered into in

_____, California, this _____ day of

_____, by and between

_____, herein after

referred to as "Owner/Lease Holder" and the CITY OF UPLAND, a municipal corporation, located in the County of San Bernardino, State of California hereinafter referred to as "CITY";

WHEREAS, the Owner owns real property ("Property") in the City of Upland, County of San Bernardino, State of California, more specifically described in Exhibit "A" and depicted in Exhibit "B", each of which exhibits is attached hereto and incorporated herein by this reference; and

WHEREAS, at the time of initial approval of development project known as

_____ within the Property described herein, the City required the project to employ Best Management Practices, hereinafter referred to as "BMPs," to minimize pollutants in urban runoff; and

WHEREAS, the Owner/Lease Holder has chosen to install and/or implement BMPs as described in the Water Quality Management Plan, on file with the City, hereinafter referred to as "WQMP", to minimize pollutants in urban runoff and to minimize other adverse impacts of urban runoff; and

WHEREAS, said WQMP has been certified by the Owner/lease Holder, and reviewed and approved by the City; and

WHEREAS, said BMPs, with installation and/or implementation on private property and draining only private property, are part of a private facility with all maintenance or replacement, therefore, the sole responsibility of the Owner/Lease Holder in accordance with the terms of this Agreement; and

WHEREAS, the Owner/Lease Holder is aware that periodic and continuous maintenance, including, but not necessarily limited to, filter material replacement and sediment removal, is required to assure peak performance of all BMPs in the WQMP and that, furthermore, such maintenance activity will require compliance with all Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs.

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. Owner/Lease Holder shall comply with the WQMP.
2. All maintenance or replacement of BMPs proposed as part of the WQMP are the sole responsibility of the Owner/Lease Holder in accordance with the terms of this Agreement.
3. Owner/Lease Holder hereby provides the City of Upland's designee complete access, of any duration, to the BMPs and their immediate vicinity at any time, upon reasonable notice, or in the event of emergency, as determined by the City's Public Works Director, no advance notice, for the purpose of inspection, sampling, testing of the Device, and in case of emergency, to undertake all necessary repairs or other preventative measures at owner/lease holder's expense as provided in paragraph 5 below. City shall make every effort at all times to minimize or avoid interference with Owner/Lease Holder's use of the Property. Denial of access to any premises or facility that contain WQMP features is a breach of this Agreement and may also be a violation of the City's storm water drainage management regulations. If there is a reasonable cause to believe that an illicit discharge or breach of this Agreement is occurring on the premises then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction in addition to other enforcement actions. Owner/Lease Holder recognizes that the City may perform inspections of BMPs. Owner/Lease Holder or Owner's successors or assigns shall pay the City for all costs incurred by the City for inspections, sampling, testing of BMPs within thirty (30) calendar days of the City's invoice.
4. Owner/Lease Holder shall use its best efforts diligently to maintain all BMPs in a manner assuring peak performance at all times. All reasonable precautions shall be exercised by Owner/Lease Holder and Owner's representative or contractor in the removal and extraction of any material(s) from the BMPs and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. As may be requested from time to time by the City, the Owner/Lease Holder shall provide the City with documentation identifying the material(s) removed, the quantity, and disposal destination.

5. In the event Owner/Lease Holder, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement, within five (5) days of being given written notice by the City, the City is hereby authorized to cause any maintenance necessary to be done and charge the entire cost and expense to the Owner/Lease Holder or Owner's successors or assigns, including administrative costs, attorneys' fees and interest thereon at the maximum rate authorized by the Civil Code from the date of the notice of expense until paid in full. Owner/Lease Holder or Owner's successors or assigns shall pay the City within thirty (30) calendar days of the City invoice.

5. (a) To compensate the City for expenses incurred by the City to perform the aforementioned maintenance in event that Owner/Lease Holder, its successors or assigns, fails to satisfactorily perform the necessary maintenance, which causes the City to perform it instead, Owner/Lease Holder, its successors or assigns, is required to make a minimum cash deposit of \$10,000 with the City prior to issuance of permit(s) for precise or final grading. In such event that causes the City to use Owner deposit to cover for maintenance expenses, upon notice by the City, Lease Holder, Owner, its heirs, successors, executors, administrators and assigns, shall replenish the cash deposit to meet the said minimum deposit requirement within thirty (30) calendar days of the City notice.

5. (b) Depending on the maintenance expense, including administrative costs, estimated or incurred by the City to perform the necessary maintenance contemplated by this Agreement, the City may require Owner/Lease Holder to post additional security in form of bond(s) to make the combination of minimum cash deposit and security bonds to be at least of one hundred fifty percent (150%) of the maintenance expense. The additional bond(s) security period is for a time period determined by the City to guarantee the performance of the obligations stated herein. Should Owner/Lease Holder fails to perform the obligations under the Agreement, the City can, in the case of a cash bond, act for Owner/Lease Holder, using the proceeds from it, or in the case of a surety bond, require the surety(ies) to perform the obligations of this Agreement.

5. (c) The City agrees, from time to time, within ten (10) City business days after request of Owner/Lease Holder, to execute and send to Owner/Lease Holder, or Owner's designee, an estoppel certificate requested by Owner/Lease Holder, stating that this Agreement is in full force and effect, and that Owner/Lease Holder is not in default hereunder with regard to any maintenance or payment obligations (or specifying in detail the nature of Owner/Lease Holder's default). Owner/Lease Holder shall pay all costs and expenses incurred by the City in its investigation of whether to issue an estoppel certificate within thirty (30) calendar days after receipt of the City invoice and prior to the City's issuance of such certificate. Where the City cannot issue an estoppel certificate, Owner/Lease Holder shall pay the City within thirty (30) calendar days of receipt of the City's invoice in association with its investigation of whether to issue an estoppel certificate.

6. Owner/Lease Holder shall not change any BMPs identified in the WQMP without an amendment to this Agreement approved by authorized representatives of both the City and the Owner/Lease Holder.
7. The City and Owner/Lease Holder shall comply with all applicable laws, ordinances, rules, regulations, court orders and government agency orders now or hereinafter in effect in carrying out the terms of this Agreement. If a provision of this Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.
8. This agreement shall be recorded in the Office of the Recorder of San Bernardino County, California, at the expense of the Owner/Lease Holder and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth, and also a lien in such amount as will fully reimburse the City, including interest as herein above set forth, subject to foreclosure in event of default in payment.
9. In event of legal action occasioned by any default or action of the Owner/Lease Holder, or its successors or assigns, then the Owner/Lease Holder and its successors or assigns agree(s) to pay all costs incurred by the City in enforcing the terms of this Agreement, including reasonable attorney's fees and costs, and that the same shall become a part of the lien against said Property.
10. It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien there against.
11. The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also the Lease Holder, the Owner's heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner/Lease Holder shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Owner/Lease Holder shall provide a copy of such notice to the City at the same time such notice is provided to the successor.
12. Time is of the essence in the performance of this Agreement.
13. Any notice to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to the address set forth below. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

IF TO CITY:

Director of Public Works

City of Upland

460 N. Euclid Avenue

Upland, CA 91786

IF TO OWNER:

IF TO LEASE HOLDER:

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

LEASE HOLDER:

Company/Trust

Signature

Title

Print Name

Date

OWNER:

Company/Trust

Signature

Title

Print Name

Date

NOTARIES ON FOLLOWING PAGE(S)

Notary acknowledgement is required for recordation (attach appropriate acknowledgement).

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me, _____,
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first hereinabove written.

CITY:

CITY OF UPLAND

Bill Velto, Mayor

ATTEST:

Keri Johnson, City Clerk

APPROVED:

Stephen Deitsch, City Attorney

EXHIBIT A
(Legal Description)

EXHIBIT B
(Map/Illustration)